

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R9-2015-0015
IN THE MATTER OF
JACOBS CENTER FOR NEIGHBORHOOD INNOVATION**

**NORTHWEST VILLAGE CREEK CONSTRUCTION PROJECT
SAN DIEGO COUNTY**

INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), on behalf of the San Diego Water Board Prosecution Team (Prosecution Team), and Jacobs Center for Neighborhood Innovation (Discharger) (collectively Parties) and is presented to the San Diego Water Board, for adoption as an order, by settlement, pursuant to Government Code section 11415.60.

RECITALS

1. The Discharger is constructing the Northwest Village Creek Construction Project (Project). The Project entails demolition of an asphalt parking lot and structure, and grading for a retail pharmacy and access road. The Project is located at 602 Euclid Avenue, San Diego, California (Site), in the San Diego community of Chollas View.
2. Discharger is the project developer. Stephen Maduli-Williams, Discharger Vice President is the Legally Responsible Person (LRP) for the Discharger for the Project.
3. On March 26, 2014, Discharger filed a Notice of Intent (NOI) to comply with California State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction Storm Water Permit) and was assigned Waste Discharge Identification (WDID) No. 9 37C369293 to the Project.
4. Construction Storm Water Permit section V.A.2. requires the implementation of best management practices (BMPs), using best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce pollution from storm water runoff from construction sites.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

5. Construction Storm Water Permit section VIII requires dischargers to calculate the site's Risk Level based upon "the site's sediment risk and receiving water risk during periods of soil exposure (i.e. grading and site stabilization)." The Site's Storm Water Pollution Prevention Plan (SWPPP) characterizes the Project as being Risk Level 1.
6. The 3.7 acre Site lies within the Chollas Hydrologic Subarea (HSA) (908.22) of the Pueblo San Diego Hydrologic Unit. Storm water discharges from the Site drain directly into Chollas Creek and indirectly into Chollas Creek via the City of San Diego's storm water conveyance system.
7. The Water Quality Control Plan for the San Diego Basin (Basin Plan) designates the following beneficial uses for Chollas Creek:
 - a. Contact Water Recreation (REC-1);
 - b. Non-contact Water Recreation (REC-2);
 - c. Warm Freshwater Habitat (WARM); and
 - d. Wildlife Habitat (WILD).
8. On December 4, 2014, Wayne Chiu of the San Diego Water Board's Storm Water Management Unit inspected the Site. Based upon the results of the inspection, the San Diego Water Board issued Notice of Violation No. R9-2014-0145 on December 10, 2014, to the Discharger.
9. The San Diego Water Board invested 110.5 staff hours to investigate, prepare enforcement documents, and consider this action for a total cost of \$7,879. See Technical Analysis Exhibit No. 8.
10. Discharger is alleged to have violated provisions of law for which the San Diego Water Board may impose civil liability pursuant to section 13385 of the California Water Code (Water Code).

The Prosecution Team alleges the following violations, set forth in full in the attached Technical Analysis, by the Discharger:

11. Violation No. 1: Discharge of Sediment Laden Storm Water: (1 day)
Discharger discharged sediment laden storm water from the Site into Chollas Creek on December 4, 2014, in violation of Construction Storm Water Permit sections III.A., III.B., V.A.1., and V.A.2. The Discharger ceased the discharge upon the San Diego Water Board's discovery and direction. Discharger's action resulted in one (1) day of violation.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

12. Violation No. 2: Failure to Implement Erosion Controls: (1 day)
During the December 4, 2014, San Diego Water Board inspection several areas of the Site appeared to be inactive and without effective soil cover for erosion control in violation of Construction Storm Water Permit, Attachment C, section D.2. The Discharger corrected the violation upon notification by the San Diego Water Board; therefore, Discharger is in violation for one (1) day.
13. Violation No. 3: Failure to Implement Sediment Controls: (1 day)
The December 4, 2014, San Diego Water Board inspection noted the discharge of a significant amount of sediment onto Market Street and the sidewalk as a result of inadequate sediment control BMPs along the Site perimeter and the two Market Street entrances in violation of Construction Storm Water Permit, Attachment C, section E.1. The Discharger corrected the violation upon notification by the San Diego Water Board; therefore, Discharger is in violation for one (1) day.
14. Violation No. 4: Failure to Implement Run-on and Runoff Controls: (1 day)
The December 4, 2014, San Diego Water Board inspection documented where Site perimeter sediment controls were not established or maintained, resulting in run-on from the Church's Chicken property onto the Site in violation of Construction Storm Water Permit, Attachment C, section F. The Discharger corrected the violation upon notification by the San Diego Water Board; therefore, Discharger is in violation for one (1) day.
15. Violation No. 5: Failure to Cover Stockpiles: (1 day)
The December 4, 2014, San Diego Water Board inspection documented that the large soil stockpile failed to have adequate cover in violation of Construction Storm Water Permit, Attachment C, section B.1.b. The Discharger corrected the violation upon notification by the San Diego Water Board; therefore, Discharger is in violation for one (1) day.
16. Violation No. 6: Failure to Implement Entrance Tracking BMPs: (1 day)
The December 4, 2014, San Diego Water Board inspection documented significant sediment tracking at the Market Street site entrance (east, near Church's Chicken), indicating inadequate sediment control BMPs and sweeping of the entrance in violation of Construction Storm Water Permit, Attachment C, section B.1.e. The Discharger corrected the violation upon notification by the San Diego Water Board; therefore, Discharger is in violation for one (1) day.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

17. Violation No. 7: Failure to Implement Vehicle Fluid Leaks BMPs: (1 day)
The December 4, 2014, San Diego Water Board inspection confirmed that the vehicles did not use drip pans to catch vehicle fluid leaks in violation of Construction Storm Water Permit, Attachment C, section B.3.a. The Discharger corrected the violation upon notification by the San Diego Water Board; therefore, Discharger is in violation for one (1) day.
18. Violation No. 8: Failure to Complete Inspection Checklist: (1 day)
The submitted weekly QSP inspection report for December 4, 2014, did not include implementation dates in violation of Construction Storm Water Permit, Attachment C, section G.5.g. The Discharger corrected the violation upon notification by the San Diego Water Board; therefore, Discharger is in violation for one (1) day.
19. Pursuant to Water Code section 13385(a), a person that violates Water Code section 13376, a waste discharge requirement, or a requirement of section 301 of the federal Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385(c) "in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."
20. The alleged violations constitute violations subject to Water Code section 13385. Therefore, the maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385(c) is summarized in Table 1, Maximum and Minimum Liability Amounts.
21. Water Code section 13385(e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) requires that the adjusted Total Base Liability shall be at least ten percent (10%) higher than the economic benefit. Therefore, the minimum liability that the San Diego Water Board shall assess pursuant to Water Code section 13385(e) is summarized in Table 1. Maximum and Minimum Liability Amounts. See also Technical Analysis Exhibit No. 7.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

Table 1. Maximum and Minimum Liability Amounts

Violation	Days	Liability	
		Maximum	Minimum
1. Discharge of Sediment Laden Storm Water	1	\$10,000	\$1,070
2. Failure to Implement Erosion Controls	1	\$10,000	\$5,089
3. Failure to Implement Sediment Controls	1	\$10,000	\$109
4. Failure to Implement Run-on and Runoff Controls	1	\$10,000	\$547
5. Failure to Cover Stockpiles	1	\$10,000	\$2,545
6. Failure to Implement Entrance Tracking BMPs	1	\$10,000	\$1,231
7. Failure to Implement Vehicle Fluid Leaks BMPs	1	\$10,000	\$2,896
8. Failure to Complete Inspection Checklist	1	\$10,000	\$113
Totals		\$80,000	\$13,600

22. The Parties have engaged in confidential settlement negotiations and agree to resolve the alleged violations set forth above in this Stipulated Order without formal administrative proceedings. The Parties have agreed to the final imposition of **forty-six thousand seven hundred eighteen dollars (\$46,718)** in liability against the Discharger pursuant to Water Code section 13385 and Government Code section 11415.60. The liability amount includes seven thousand eight hundred seventy-nine dollars (\$7,879) in San Diego Water Board staff costs. Table 2. Penalty Summary, provides a breakdown of the liabilities. The Prosecution Team calculated the administrative civil liability penalty under Water Code section 13385 in accordance with the Enforcement Policy. A full discussion of the penalty calculation factors can be found in Attachment A, incorporated herein by reference as if set forth in full.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

Table 2. Penalty Summary

Alleged Violation	Days of Violation	Liability Per Day of Violation	Liability Amount
1. Discharge of Sediment Laden Storm Water, December 4, 2014.	1	\$3,300	\$3,300
2. Failure to Implement Erosions, December 4, 2014.	1	\$5,089	\$5,089
3. Failure to Implement Sediment Controls, December 4, 2014.	1	\$4,550	\$4,550
4. Failure to Implement Run-on and Runoff Controls, December 4, 2014.	1	\$4,550	\$4,550
5. Failure to Cover Stockpiles, December 4, 2014.	1	\$4,550	\$4,550
6. Failure to Implement Entrance Tracking BMPs, December 4, 2014.	1	\$4,550	\$4,550
7. Failure to Implement Vehicle Fluid Leaks BMPs, December 4, 2014.	1	\$7,700	\$7,700
8. Failure to Complete Inspection Checklist, December 4, 2014.	1	\$4,550	\$4,550
Total Base Liability Amount			\$38,839
Staff Costs			\$7,879
Total Liability			\$46,718

23. Based on the information in the record, the Prosecution Team determined that the above resolution of the alleged violations is fair and reasonable, and fulfills the enforcement objectives of Water Code sections 13000 et seq., and the Enforcement Policy, and satisfies the objectives and requirements of the federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

STIPULATIONS

The Parties stipulate to the following:

24. Party Contact Information:

For the San Diego Water Board: Chiara Clemente, Enforcement Coordinator
San Diego Water Board
2375 Northside Drive, Suite 100
San Diego, California 92108
(619) 521-3371
Chiara.Clemente@waterboards.ca.gov

Kailyn Ellison (Counsel)
State Water Resources Control Board
Office of Enforcement
1001 I Street, 16th Floor
Sacramento, California 95814
(916) 445-9557
Kailyn.Ellison@waterboards.ca.gov

For the Discharger:

Stephen L. Marsh (Counsel)
McKenna Long & Aldridge LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3372
(619) 699-2418
smarsh@mckennalong.com

- 25. Administrative Civil Liability:** Discharger hereby agrees to the imposition of an administrative civil liability totaling \$46,718 as set forth in Paragraph 22 herein.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

26. Payment and Costs: Discharger shall pay the total administrative civil liability amount of forty-six thousand seven hundred eighteen dollars (\$46,718) within thirty (30) days of adoption of this Stipulated Order executed by the San Diego Water Board. Payment shall be made by check to the "State Water Board Cleanup and Abatement Account." Discharger shall indicate on the check the number of this Stipulated Order (R9-2015-0015) and send it to:

State Water Resources Control Board
Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

Discharger shall email a PDF file copy of the check to the designated San Diego Water Board Party Contacts.

27. Matters Addressed by Stipulation: Upon adoption of this Stipulated Order by the San Diego Water Board, this Stipulated Order represents a final and binding resolution to settle, as set forth herein, all claims, violations, or causes of action as alleged. The provisions of this paragraph are expressly conditioned on the payment of the administrative civil liability as provided herein by the deadlines specified in this Stipulated Order, and the Discharger's full satisfaction of the obligations described in this Stipulated Order.
28. Compliance with Applicable Laws: Discharger understands that payment of the administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in this Stipulated Order may subject it to further enforcement, including additional administrative civil liability.
29. Attorney's Fees and Costs: Except as otherwise provided herein, each Party shall bear its attorney's fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
30. Covenant Not to Take Further Enforcement Action: In consideration of Discharger's compliance with this Stipulated Order, the Prosecution Team and the San Diego Water Board hereby covenant not to bring any further administrative or judicial enforcement action against the Discharger, whether under California or federal law, concerning the specific violations alleged in this Stipulated Order.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

31. No Admission of Liability if Stipulated Order Does Not Take Effect: If this Stipulated Order does not take effect because it is not approved by the San Diego Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, Discharger's signature becomes void and the Discharger does not admit or stipulate to any of the findings or allegations in this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance.
32. Public Notice: Discharger understands that the San Diego Water Board will conduct a thirty (30) day public review and comment period prior to consideration and adoption. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the San Diego Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the San Diego Water Board. Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.
33. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedures for adopting this Stipulated Order by the San Diego Water Board and review of this Stipulated Order by the public are lawful and adequate. In the event procedural objections are raised prior to the adoption of this Stipulated Order, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
34. No Waiver of Right to Enforce: The failure of the Prosecution Team or San Diego Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or San Diego Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
35. Interpretation: This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
36. Modification: This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the San Diego Water Board, or its delegate.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

37. If Stipulated Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the San Diego Water Board, or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board and/or a hearing panel to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing pursuant to Evidence Code sections 1152 and 1154. The Parties agree to waive any and all objections based on settlement communications in this matter, other than Evidence Code sections 1152 and 1154 evidentiary objections, including, but not limited to:
- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in this Stipulated Order; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
38. Waiver of Hearing: Discharger has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of this Stipulated Order by the San Diego Water Board, or its delegate.
39. Waiver of Right to Petition: Discharger hereby waives its right to petition the San Diego Water Board's adoption of this Stipulated Order for review by the State Water Resources Control Board, and further waives its right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
40. Covenant Not to Sue: Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter addressed herein.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

41. San Diego Water Board is Not Liable: Neither the San Diego Water Board members nor the San Diego Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
42. Authority to Bind: Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind the entity on whose behalf he or she executes this Stipulated Order.
43. Necessity for Written Approvals: All approvals and decisions of the San Diego Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the San Diego Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
44. No Third Party Beneficiaries: This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
45. Effective Date: This Stipulated Order shall be effective and binding on the Parties upon the date the San Diego Water Board adopts this Stipulated Order.
46. Counterpart Signatures: This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
47. Severability: The provisions of this Stipulated Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project

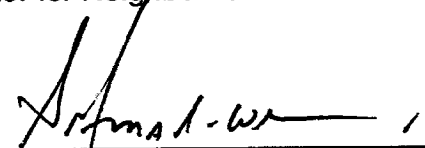
It is so stipulated.

California Regional Water Quality Control Board, San Diego Region, Prosecution Team

By: 
JAMES G. SMITH
Assistant Executive Officer


Date: 30 Apr 2015

Jacobs Center for Neighborhood Innovation

By: 
STEPHEN MADULI-WILLIAMS
Vice President

Date: 5-15-15

Approved as to Form

By: 
STEPHEN L. MARSH
Counsel for Discharger

Date: 14 May 2015

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

**FINDINGS OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION**

48. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Stipulated Order of the San Diego Water Board.
49. The San Diego Water Board finds that the Recitals set forth herein are true.
50. The proposed Stipulated Order was noticed for public comment for a minimum of thirty (30) days prior to San Diego Water Board consideration.
51. This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
52. In adopting this Stipulated Order, the San Diego Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the San Diego Water Board's staff in investigating the allegations herein or otherwise provided to the San Diego Water Board or its delegate by the Parties and members of the public. In addition to these factors, this Stipulated Order recovers the costs incurred by the staff of the San Diego Water Board for this matter.
53. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321 (a)(2), Title 14, of the California Code of Regulations.
54. The San Diego Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Stipulated Order.
55. Fulfillment of the Discharger's obligations under this Stipulated Order constitutes full and final satisfaction of any and all liability for each allegation in this Stipulated Order in accordance with the terms of this Stipulated Order.

**Settlement Agreement and
Stipulation for Entry of
ACL Order No. R9-2015-0015
Northwest Village Creek Construction Project**

Pursuant to Water Code sections 13323 and 13385, and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, San Diego Region.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on _____.

DAVID W. GIBSON
Executive Officer

Date: _____

or

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by delegated authority granted to me from the California Regional Water Quality Control Board, San Diego Region.

DAVID W. GIBSON
Executive Officer

Date: _____

Attachment A: Technical Analysis